

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.02.2021

PRONOUNCED ON : 17.03.2021

CORAM

THE HON'BLE MR. JUSTICE P.N.PRAKASH

AND

THE HON'BLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.8253 of 2020

in Crl.A.No.516 of 2020

Subramaniam

.. Petitioner/Accused No.1

Vs.

State represented by
The Inspector of Police,
All Woman Police Station,
Perur, Coimbatore city.
(Crime No.16 of 2018)

.. Respondent/Complainant

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C. to suspend the sentence imposed by learned The Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore dated 23.11.2019 in Spl. C.C.No.34 of 2019 and to enlarge the petitioner on bail pending disposal of the above appeal.

For Petitioner : Mr.N.Chinnaraj

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

O R D E R

This criminal miscellaneous petition has been preferred seeking to suspend the sentence imposed on the petitioner by judgment and order dated 23.11.2020 passed in Spl.C.C.No.34 of 2019 on the file of the Special Court for Exclusive Trial of Cases under the POCSO Act, Coimbatore (for short 'the Special Court') and to enlarge the petitioner on bail.

2. The petitioner, who was an accused in Spl.C.C.No.34 of 2019 before the Special Court, was convicted and sentenced as follows on 23.11.2020:

S.No.	Provision under which convicted	Sentence
1.	Under Section 5(I) r/w 6 of The Protection of Children from Sexual Offences Act, 2012	Life imprisonment and fine of Rs.5,000/-, in default one year rigorous imprisonment.

3. Challenging the above conviction and sentence, the petitioner has filed CrI.A.No.516 of 2020 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. Heard Mr.N.Chinnaraj, learned counsel for the petitioner and Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the petitioner submitted that the petitioner, who is the first accused, was convicted by the Special Court in Spl.C.C.No.34 of 2019 for the offences under Section 5(1) r/w 6 of The Protection of Children from Sexual Offences Act, 2012. The learned counsel further submitted that the accused has been in custody from 23.11.2020. Further, submitted that A2 is the mother of the victim girl and they were separately living due to the strained relationship between husband of A2; A1 developed illicit intimacy with the mother of the victim (A2) and he used to go to the house of A2 and the victim girl; it is alleged that on 20.06.2017, A1 sexually assaulted the victim girl and the assault happened 20 times from 20.06.2017 to 16.08.2017; the victim girl informed her mother (A2) but the latter did not take action but threatened the victim girl, not to reveal the same to anyone and if the victim girl told this to anyone, she will commit suicide; therefore, the victim left her mother, approached back to her father and informed him and he took the victim to the police: the alleged complaint was given in the year 2018. The learned counsel submitted that there is enmity between the father of the victim and mother (A2). Therefore, this case is a fabricated one. The petitioner is in custody for a long period and pleaded to suspend the sentence slapped on the petitioner and grant bail.

6. The learned Additional Public Prosecutor appearing for the respondent opposed to suspend the sentence, on the ground that there is a prima facie case against the petitioner and hence, pleaded to dismiss the petition.

7. We have considered the submissions of the learned counsel for the parties and perused the materials on record.

8. On a perusal of records, it is seen that the sexual assault had happened from 20.06.2017 to 16.08.2017. According to the victim, she immediately informed about the incident to her mother (A2) but instead of taking action against A1, A2 threatened the victim not to disclose the fact to any one otherwise, she will commit suicide. Thereafter, the victim girl left (A2) and joined her father, who lodged the complaint (Ex.P.2) on 18.09.2018. The reason stated by the victim for not immediately lodging the complaint has to be appreciated based on the evidence on record.

9. Admittedly, the father and mother of the victim are living separately and there is a strained relationship between them. The accused is also living with the mother of the victim. Under such circumstances, the complaint has been lodged by the victim with the help of her father and this point is to be considered. Besides this, the accused is in custody since 23.11.2019.

10. With regard to suspension of sentence, the following observation of the Supreme Court in the case of Kashmira Singh Vs. State of Punjab reported in [AIR 1977 SC 2147] has to be considered at this stage:

'Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: "We have admitted your appeal because we think you have a prima facie case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice inspire in the mind of

the public ? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal ? Would it not be an affront to his sense of justice ? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it ? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and-sentence.'

11. The petitioner has raised substantial grounds in the appeal which require detailed appraisal. Moreover, the petitioner has been in incarceration from 23.11.2019. Further, the appeal is not likely to be taken up in the near future. In such view of the matter, this Court is of the view that the petitioner is entitled to the relief of suspension of sentence and bail.

12. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:

- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the trial Court.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity; and

(iii) The petitioner shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

-sd/-
17/03/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE FOR
EXCLUSIVE TRIAL OF CASES UNDER POCSO ACT,
COIMBATORE.

2 THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMAN POLICE STATION,
PERUR, COIMBATORE CITY.

C.C. to M/S.N.CHINNARAJ Advocate on payment of necessary charges

Order

in
CRL.MP.NO.8253/2020
in
CRL.A.NO.516/2020

Date :17/03/2021

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format